

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APEX MARITIME CO. (ORD) INC.,

Plaintiff,

- against -

MEDITERRANEAN SHIPPING
COMPANY S.A.,

Defendant.

21 Civ. _____

COMPLAINT

Plaintiff, Apex Maritime Co. (ORD) Inc., (“Apex” and/or “Plaintiff”) by its attorneys, Tisdale & Nast Law Offices, LLC, alleges, upon on information and belief:

THE PARTIES

1. Plaintiff Apex is a company organized and existing under the laws of one of the states of the United States with an office in 1900 E. Golf Road, Suite 1105, Schaumburg, Illinois.

2. Plaintiff was at all material times a non-vessel operating common carrier (“NVOCC”) of cargo for hire arranging for the carriage of cargos on behalf of others. As such, Plaintiff issues a bill of lading to its customer and receives bills of lading in return from, among others, vessel operating common carriers.

3. Plaintiff brings this suit on its own behalf and on behalf of all others whose interests may appear.

4. Defendant Mediterranean Shipping Company S.A., (“MSC” and/or “Defendant”) is a company organized and existing under the laws of Switzerland with a head office located in MSC Mediterranean Shipping Company S.A. Chemin Rieu 12-14, 1208 Geneva Switzerland.

5. Defendant MSC was at all material times engaged in business as a vessel operating common carrier of cargo for hire and the provision of services related thereto.

6. Defendant MSC was the owner and/or operator of the M/V BRIGHTON which it operated in the common carriage of goods by water for hire between, among other places, Thailand and New York.

VENUE AND JURISDICTION

7. This matter arises out of the breach of maritime contract. This Court has subject matter jurisdiction under admiralty and maritime jurisdiction existing under 28 U.S.C. §1333. This matter also falls within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

8. This action arises from the loss of cargo carried pursuant to Defendant's bill of lading MEDUTL138533 which calls for suit to be filed in the United States District Court for the Southern District of New York with U.S. law to exclusively apply.

FACTS

9. On or about April 6, 2020, Plaintiff, as NVOCC issued bill of lading No. A2004310254, for the carriage of 850 cartons Dehydrated Pineapple ("cargo") in container TCLU7618576 ("container") for carriage from Thailand to New York. Plaintiff's bill of lading identified Unity Food Co. as the "Shipper" and was consigned "to Order." Atlantix Commodities was the Notify Party.

10. Plaintiff contracted with MSC to perform the ocean carriage. On or about April 6, 2020, Plaintiff delivered the cargo and container, then in good order and condition, to MSC for carriage from Laem Chabang, Thailand to New York for an agreed freight pursuant to MSC bill of lading No. MEDUTL138533.

11. The cargo was full and complete as to quantity and weight and was in good order and condition when received by Defendant MSC, or entities acting on its behalf, at the Place of Receipt specified on the bill of lading.

12. While being transported by the Defendant MSC, at the transshipment port of Singapore, the cargo and container sustained damage while being handled by the Defendant and/or its agents.

13. In any event, when the Cargo was delivered by MSC it was not in the same good order and condition as when received by MSC, but sustained damage and declared to be a total loss.

14. The cargo was damaged as a result of Defendant's and/or its agent's negligence in its failure to properly and carefully load, handle, stow, care for and discharge the cargo while in its care, custody and control, and/or by Defendant's breach of contract and/or breach of bailment.

15. As a direct and proximate result of Defendant's negligence and/or breach of contract and/or breach of bailment, Plaintiff was required, as NVOCC, to pay the cargo owner \$76,957, in full and final settlement of its claims for cargo damage.

16. Plaintiff brings this action for indemnity and/or contribution from Defendant in the amount of \$76,957, plus interest and costs.

17. All conditions precedent required of Plaintiff and all others interested in said cargo have been performed.

WHEREFORE, Plaintiff, Apex Maritime Co. (ORD) Inc., respectfully prays that: (1) Process in due form of law issue against Defendant, Mediterranean Shipping Company S.A., citing them to appear and answer this Verified Complaint; (2) Judgment in favor of Plaintiff, Apex Maritime Co. (ORD) Inc., against Mediterranean Shipping Company S.A., for all sums shown to

be due and owing at trial, together with interest and costs and attorney's fees; and (3) that Plaintiff, Apex Maritime Co. (ORD) Inc, be awarded such other relief as it may be entitled.

Dated: July 8, 2021
New York, NY

Respectfully submitted,
Attorneys for Plaintiff,

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